

BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO SEX OFFENDERS; PROVIDING FOR VERIFICATION OF
REGISTRATION; REQUIRING THAT THE CRIMES OF KIDNAPPING AND FALSE
IMPRISONMENT BE COMMITTED WITH SEXUAL INTENT BEFORE THEY ARE
DEEMED A SEX OFFENSE; MODIFYING REGISTRATION REQUIREMENTS;
EXPANDING THE DEFINITION OF "SEX OFFENDER"; CLARIFYING THE
INFORMATION AVAILABLE ON THE SEX OFFENDER INTERNET WEB SITE;
REITERATING STATE PREEMPTION OF THE FIELD OF SEX OFFENDER
REGISTRATION BY PROHIBITING LAW ENFORCEMENT FROM REQUIRING
ADDITIONAL REGISTRATION THAN IS REQUIRED BY STATE LAW OR FROM
IMPOSING OTHER RESTRICTIONS; PROVIDING THAT A DISTRICT ATTORNEY
IS NOT REQUIRED TO PROVIDE NOTICE BEFORE PROSECUTION FOR
CERTAIN SEX OFFENSES AGAINST CHILDREN; PROVIDING DEFINITIONS;
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAW IN
LAWS 2007.

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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

2 SECTION 1. Section 29-11A-3 NMSA 1978 (being Laws 1995,
3 Chapter 106, Section 3, as amended by Laws 2007, Chapter 68,
4 Section 1 and by Laws 2007, Chapter 69, Section 5) is amended
5 to read:

6 "29-11A-3. DEFINITIONS.--As used in the Sex Offender
7 Registration and Notification Act:

8 A. "conviction" means a conviction in any court of
9 competent jurisdiction and includes a deferred sentence but
10 does not include a conditional discharge;

11 B. "institution of higher education" means a:

12 (1) private or public post-secondary
13 educational institution;

14 (2) trade school; or

15 (3) professional school;

16 C. "habitually lives" means any place where a sex
17 offender lives for at least thirty days in any three-hundred-
18 sixty-five-day period;

19 [G.] D. "registration requirement" means any
20 requirement set forth in Section 29-11A-4 NMSA 1978 that
21 requires a sex offender to register; provide information,
22 including a DNA sample; renew, revise or change registration
23 information; or provide written notice or disclosure regarding
24 the sex offender's status as a sex offender;

25 [D.] E. "sex offender" means a person who:

1 (1) is a resident of New Mexico who is
2 convicted of a sex offense pursuant to state, federal, tribal
3 or military law or pursuant to the law of a foreign nation that
4 the United States department of state, in its country reports
5 on human rights practices, has concluded that an independent
6 judiciary generally or vigorously enforced the right to a fair
7 trial in that nation during the year in which the conviction
8 occurred;

9 (2) changes residence to New Mexico, when that
10 person has been convicted of a sex offense pursuant to state,
11 federal, tribal or military law or pursuant to the law of a
12 foreign nation that the United States department of state, in
13 its country reports on human rights practices, has concluded
14 that an independent judiciary generally or vigorously enforced
15 the right to a fair trial in that nation during the year in
16 which the conviction occurred;

17 (3) does not have an established residence in
18 New Mexico but lives in a shelter, halfway house or
19 transitional living facility or stays in multiple locations in
20 New Mexico and who has been convicted of a sex offense pursuant
21 to state, federal, tribal or military law or pursuant to the
22 law of a foreign nation that the United States department of
23 state, in its country reports on human rights practices, has
24 concluded that an independent judiciary generally or vigorously
25 enforced the right to a fair trial in that nation during the

1 year in which the conviction occurred; or

2 (4) is a resident of another state and who has
3 been convicted of a sex offense pursuant to state, federal,
4 tribal or military law or pursuant to the law of a foreign
5 nation that the United States department of state, in its
6 country reports on human rights practices, has concluded that
7 an independent judiciary generally or vigorously enforced the
8 right to a fair trial in that nation during the year in which
9 the conviction occurred, but who is:

10 (a) employed full time or part time in
11 New Mexico for a period of time exceeding fourteen days or for
12 an aggregate period of time exceeding thirty days during any
13 calendar year, including any employment or vocation, whether
14 financially compensated or volunteered or for the purpose of
15 government or educational benefit; or

16 (b) enrolled on a full-time or part-time
17 basis in a private or public school or an institution of higher
18 education in New Mexico; [~~and~~

19 ~~E.] F.~~ "sex offense" means any of the following
20 offenses or their equivalents in any other jurisdiction:

21 (1) aggravated criminal sexual penetration or
22 criminal sexual penetration in the first, second, third or
23 fourth degree, as provided in Section 30-9-11 NMSA 1978;

24 (2) criminal sexual contact in the fourth
25 degree, as provided in Section 30-9-12 NMSA 1978;

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1 (3) criminal sexual contact of a minor in the
2 second, third or fourth degree, as provided in Section
3 30-9-13 NMSA 1978;

4 (4) sexual exploitation of children, as
5 provided in Section 30-6A-3 NMSA 1978;

6 (5) sexual exploitation of children by
7 prostitution, as provided in Section 30-6A-4 NMSA 1978;

8 (6) kidnapping, as provided in Section
9 30-4-1 NMSA 1978, ~~[when the victim is less than eighteen years~~
10 ~~of age and the offender is not a parent of the victim]~~ with
11 intent to inflict a sexual offense;

12 (7) false imprisonment, as provided in Section
13 30-4-3 NMSA 1978, ~~[when the victim is less than eighteen years~~
14 ~~of age and the offender is not a parent of the victim]~~ with
15 intent to inflict a sexual offense;

16 (8) aggravated indecent exposure, as provided
17 in Section 30-9-14.3 NMSA 1978;

18 (9) enticement of child, as provided in
19 Section 30-9-1 NMSA 1978;

20 (10) incest, as provided in Section 30-10-3
21 NMSA 1978, when the victim is less than eighteen years of age;

22 (11) child solicitation by electronic
23 communication device, as provided in Section 30-37-3.2 NMSA
24 1978, for convictions occurring on or after July 1, 2013;

25 (12) solicitation to commit criminal sexual

1 contact of a minor in the second, third or fourth degree, as
2 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

3 (13) attempt to commit any of the sex offenses
4 set forth in Paragraphs (1) through [~~(11)~~] (10) of this
5 subsection, as provided in Section 30-28-1 NMSA 1978; and

6 G. "social networking site" means an internet web
7 site that facilitates online social interaction by offering a
8 mechanism for communication with other users, where such users
9 are likely to include a substantial number of minors under the
10 age of sixteen, and allowing users, through the creation of web
11 pages, profiles or other means, to provide information about
12 themselves that is available to the public or to other users."

13 SECTION 2. Section 29-11A-4 NMSA 1978 (being Laws 1995,
14 Chapter 106, Section 4, as amended) is amended to read:

15 "29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION
16 REQUIRED--VERIFICATION--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

17 A. A sex offender residing in this state shall
18 register with the county sheriff for the county in which the
19 sex offender resides.

20 B. A sex offender who is a resident of New Mexico
21 shall initially register with the county sheriff no later than
22 ten days after being released from the custody of the
23 corrections department, a municipal or county jail or a
24 federal, military or tribal correctional facility or detention
25 center or being placed on probation or parole. A sex offender

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1 who changes [~~his~~] residence to New Mexico shall register with
2 the county sheriff no later than ten days after [~~his~~] arrival
3 in this state. When a sex offender initially registers with
4 the county sheriff, [~~he~~] the sex offender shall provide the
5 following registration information:

6 (1) [~~his~~] the sex offender's legal name and
7 any other names or aliases that [~~he~~] the sex offender is using
8 or has used;

9 (2) [~~his~~] the sex offender's date of birth;

10 (3) [~~his~~] the sex offender's social security
11 number;

12 (4) [~~his~~] the sex offender's current physical
13 and mailing address and the address of every place where the
14 sex offender habitually lives;

15 (5) [~~his~~] the sex offender's place of
16 employment;

17 (6) the sex offense for which [~~he~~] the sex
18 offender was convicted; [~~and~~]

19 (7) the date and place of [~~his~~] the sex
20 offense conviction;

21 (8) the sex offender's names, email addresses
22 and monikers and other self-identifiers used on social
23 networking sites, to be used only for law enforcement purposes;

24 (9) the sex offender's landline and cellular
25 telephone numbers and any other telephone numbers primarily

1 used by the sex offender;

2 (10) the sex offender's professional licenses;

3 (11) the license plate or other identifier and
4 the description of any vehicle owned or primarily operated by
5 the sex offender, including aircraft and watercraft;

6 (12) the name and address of any school or
7 institution of higher education that the sex offender is
8 attending; and

9 (13) copies of the sex offender's passport and
10 immigration documents.

11 C. A sex offender who is a resident of another
12 state but who is employed in New Mexico or attending public or
13 private school or an institution of higher education in New
14 Mexico shall register with the county sheriff for the county in
15 which the sex offender is working or attending school or an
16 institution of higher education. ~~[D. A sex offender who is a~~
17 ~~resident of another state but who is employed in New Mexico or~~
18 ~~attending public or private school or an institution of higher~~
19 ~~education in New Mexico]~~ The sex offender shall register ~~[with~~
20 ~~the county sheriff]~~ no later than ten days after beginning work
21 or school. When the sex offender registers with the county
22 sheriff, ~~[he]~~ the sex offender shall provide the following
23 registration information:

24 (1) ~~[his]~~ the sex offender's legal name and
25 any other names or aliases that ~~[he]~~ the sex offender is using

1 or has used;

2 (2) ~~[his]~~ the sex offender's date of birth;

3 (3) ~~[his]~~ the sex offender's social security
4 number;

5 (4) ~~[his]~~ the sex offender's current physical
6 and mailing address and the address of every place where the
7 sex offender habitually lives in ~~[his]~~ the sex offender's state
8 of residence and, if applicable, the address of ~~[his]~~ the sex
9 offender's place of lodging in New Mexico while ~~[he-is]~~ working
10 or attending school or an institution of higher education;

11 (5) ~~[his]~~ the sex offender's place of
12 employment or the name of the school ~~[he]~~ the sex offender is
13 attending;

14 (6) the sex offense for which ~~[he]~~ the sex
15 offender was convicted; ~~[and]~~

16 (7) the date and place of ~~[his]~~ the sex
17 offense conviction;

18 (8) the sex offender's names, email addresses
19 and monikers and other self-identifiers used on social
20 networking sites, to be used only for law enforcement purposes;

21 (9) the sex offender's landline and cellular
22 telephone numbers and any other telephone numbers primarily
23 used by the sex offender;

24 (10) the sex offender's professional licenses;

25 (11) the license plate or other identifier and

1 the description of any vehicle owned or primarily operated by
2 the sex offender, including aircraft and watercraft;

3 (12) the name and address of any school or
4 institution of higher education that the sex offender is
5 attending; and

6 (13) copies of the sex offender's passport and
7 immigration documents.

8 [E-] D. When a sex offender registers with a county
9 sheriff, the sheriff shall obtain:

10 (1) a photograph of the sex offender and a
11 complete set of the sex offender's fingerprints and a palm
12 print;

13 (2) a physical description, including a
14 description of any tattoos, scars or other distinguishing
15 features on the sex offender's body that would assist in
16 identifying the sex offender; and

17 (3) a DNA sample [~~of his DNA~~] for inclusion in
18 the sex offender DNA identification system pursuant to the
19 provisions of the DNA Identification Act.

20 [F-] E. When a sex offender who is registered
21 changes [~~his~~] residence within the same county, the sex
22 offender shall send written notice of [~~his~~] the change of
23 address to the county sheriff no later than ten days after
24 establishing [~~his~~] the new residence.

25 [G-] F. When a sex offender who is registered

1 changes [~~his~~] residence to a new county in New Mexico, the sex
2 offender shall:

3 (1) register with the county sheriff of the
4 new county no later than ten days after establishing [~~his~~] the
5 new residence; [~~The sex offender shall also~~] and

6 (2) send written notice of the change in
7 residence to the county sheriff with whom [~~he~~] the sex offender
8 last registered no later than ten days after establishing [~~his~~]
9 the new residence.

10 G. When a sex offender who is registered is
11 incarcerated for more than ten consecutive days, the sex
12 offender shall report to the county sheriff no later than seven
13 days after being released.

14 H. When a sex offender who is registered or
15 required to register is homeless or does not have an
16 established residence but lives in a shelter, halfway house or
17 transitional living facility or stays in multiple locations in
18 New Mexico, the sex offender shall register with the county
19 sheriff for each county in which the sex offender is living or
20 temporarily located. The sex offender shall register no later
21 than ten days after a change in [~~his~~] living arrangements or
22 temporary location.

23 I. When a sex offender who is registered or
24 required to register is employed, begins a vocation or is
25 enrolled as a student at an institution of higher education in

1 New Mexico, the sex offender shall disclose [~~his~~] the sex
2 offender's status as a sex offender in writing to the county
3 sheriff for the county in which the institution of higher
4 education is located, the law enforcement entity responsible
5 for the institution of higher education and the registrar for
6 the institution of higher education no later than ten days
7 after beginning employment, beginning a vocation or enrolling
8 at the institution of higher education. The sex offender shall
9 also send written notice of any change regarding [~~his~~]
10 employment, vocation or enrollment status at an institution of
11 higher education to the county sheriff, the law enforcement
12 entity and the registrar no later than ten days after the
13 change in [~~his~~] employment, vocation or enrollment status.

14 J. When a sex offender who is registered or
15 required to register is employed or is enrolled as a student at
16 a public or private school in New Mexico, the sex offender
17 shall disclose [~~his~~] the sex offender's status as a sex
18 offender in writing to the county sheriff for the county in
19 which the school is located and to the principal of the school
20 no later than ten days after beginning employment or enrolling
21 at the school. The sex offender shall also send written notice
22 of any change regarding [~~his~~] employment or enrollment status
23 at a school to the county sheriff and the principal no later
24 than ten days after the change in [~~his~~] employment or
25 enrollment status.

1 K. When a sex offender who is registered or
2 required to register is employed, begins a vocation or
3 volunteers ~~[his]~~ services, regardless of whether the sex
4 offender receives payment or other compensation, the sex
5 offender shall disclose ~~[his]~~ the sex offender's status as a
6 sex offender in writing to ~~[his]~~ the sex offender's employer,
7 supervisor or person similarly situated. The written
8 disclosure shall be made immediately upon beginning ~~[his]~~
9 employment, vocation or volunteer service.

10 L. Following ~~[his]~~ initial registration pursuant to
11 the provisions of this section:

12 (1) a sex offender ~~[required to register~~
13 ~~pursuant to the provisions of]~~ convicted of any of the sex
14 offenses enumerated in Subsection D of Section 29-11A-5 NMSA
15 1978 or their equivalents shall ~~[renew his]~~ verify registration
16 information with the county sheriff as provided in Subsection N
17 of this section not less than once in each ninety-day period
18 following the date of the sex offender's initial registration
19 for the ~~[entirety]~~ remainder of ~~[his]~~ the sex offender's
20 natural life; and

21 (2) a sex offender ~~[required to register~~
22 ~~pursuant to the provisions of]~~ convicted of any of the sex
23 offenses enumerated in Subsection E of Section 29-11A-5 NMSA
24 1978 or their equivalents shall annually ~~[renew his]~~ verify
25 registration information with the county sheriff as provided in

1 Subsection N of this section prior to December 31 of each
2 subsequent calendar year for a period of ten years.

3 M. Notwithstanding the provisions of Paragraph (2)
4 of Subsection L of this section, if a sex offender is convicted
5 a second or subsequent time for a sex offense set forth in
6 Subsection E of Section 29-11A-5 NMSA 1978, ~~[he]~~ the sex
7 offender shall ~~[renew his]~~ verify registration information with
8 the county sheriff as provided in Subsection N of this section
9 not less than once in each ninety-day period following the date
10 of the sex offender's initial registration for the ~~[entirety]~~
11 remainder of ~~[his]~~ the sex offender's natural life.

12 N. At least fifteen days prior to the time a sex
13 offender is required to verify the sex offender's registration
14 with a county sheriff, the department of public safety shall
15 send, electronically or by first class mail, to any sex
16 offender who elects to receive notification, a registration
17 verification form containing the sex offender's current
18 registration information and a notice that the sex offender is
19 required to appear at the county sheriff's office. The sex
20 offender shall return the verification form in person to the
21 county sheriff on or before the date specified in the notice
22 and sign a statement under oath that the information is true
23 and correct. The sheriff may photograph the sex offender at
24 that time if the sex offender's appearance is significantly
25 different from the photograph already contained in the sex

1 offender's file. Regardless of whether the sex offender
2 receives notification, the sex offender shall appear at the
3 county sheriff's office to verify registration information as
4 required by this section.

5 [N-] O. A sex offender who willfully or
6 knowingly fails to comply with the registration or verification
7 requirements set forth in this section is guilty of a fourth
8 degree felony and shall be sentenced pursuant to the provisions
9 of Section 31-18-15 NMSA 1978. A sex offender who willfully or
10 knowingly fails to comply with the registration or verification
11 requirements set forth in this section after a first or
12 subsequent conviction for a violation pursuant to this section
13 is guilty of a third degree felony and shall be sentenced
14 pursuant to the provisions of Section 31-18-15 NMSA 1978. The
15 willful failure to comply with any registration or verification
16 requirement set forth in this section shall be deemed part of a
17 continuing transaction or occurrence. A conviction pursuant to
18 this subsection shall not be considered a felony for purposes
19 of the imposition of sentencing enhancements pursuant to the
20 provisions of Section 31-18-17 NMSA 1978.

21 [O-] P. A sex offender who willfully or knowingly
22 provides false information when complying with the registration
23 or verification requirements set forth in this section is
24 guilty of a fourth degree felony and shall be sentenced
25 pursuant to the provisions of Section 31-18-15 NMSA 1978. A

1 sex offender who willfully or knowingly provides false
2 information when complying with the registration or
3 verification requirements set forth in this section after a
4 first or subsequent conviction for a violation pursuant to this
5 section is guilty of a third degree felony and shall be
6 sentenced pursuant to the provisions of Section 31-18-15 NMSA
7 1978. The willful providing by a sex offender of false
8 information with respect to the registration or verification
9 requirements set forth in this section shall be deemed part of
10 a continuing transaction or occurrence. A conviction pursuant
11 to this subsection shall not be considered a felony for
12 purposes of the imposition of sentencing enhancements pursuant
13 to the provisions of Section 31-18-17 NMSA 1978."

14 SECTION 3. Section 29-11A-5 NMSA 1978 (being Laws 1995,
15 Chapter 106, Section 5, as amended by Laws 2007, Chapter 68,
16 Section 2 and by Laws 2007, Chapter 69, Section 6) is amended
17 to read:

18 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
19 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
20 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

21 A. A county sheriff shall maintain a local registry
22 of sex offenders in the sheriff's jurisdiction required to
23 register pursuant to the provisions of the Sex Offender
24 Registration and Notification Act.

25 B. The county sheriff shall forward:

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1 (1) registration information obtained from sex
2 offenders to the department of public safety. The initial
3 registration information and any new registration information
4 subsequently obtained from a sex offender shall be forwarded by
5 the county sheriff no later than ten working days after the
6 information is obtained from a sex offender. If the department
7 of public safety receives information regarding a sex offender
8 from a governmental entity other than a county sheriff, the
9 department shall send that information to the sheriff for the
10 county in which the sex offender resides; and

11 (2) samples of DNA obtained from sex offenders
12 to the administrative center for the sex offender DNA
13 identification system pursuant to the provisions of the DNA
14 Identification Act.

15 C. The department of public safety shall maintain a
16 central registry of sex offenders required to register pursuant
17 to the provisions of the Sex Offender Registration and
18 Notification Act. The department shall participate in the
19 national sex offender registry administered by the United
20 States department of justice. The department shall send
21 conviction information and fingerprints for all sex offenders
22 registered in New Mexico to the national sex offender registry
23 administered by the United States department of justice and to
24 the federal bureau of investigation.

25 D. The department of public safety shall retain

1 registration information regarding a sex offender convicted for
2 any of the following sex offenses for the entirety of the sex
3 offender's natural life:

4 (1) aggravated criminal sexual penetration or
5 criminal sexual penetration in the first, second or third
6 degree, as provided in Section 30-9-11 NMSA 1978;

7 (2) criminal sexual contact of a minor in the
8 second, third or fourth degree, as provided in Section
9 30-9-13 NMSA 1978;

10 (3) sexual exploitation of children, as
11 provided in Section 30-6A-3 NMSA 1978;

12 (4) kidnapping, as provided in Section
13 30-4-1 NMSA 1978, ~~[when the victim is less than eighteen years~~
14 ~~of age and the offender is not a parent of the victim]~~ with
15 intent to inflict a sexual offense; or

16 ~~[(5) criminal sexual contact in the fourth~~
17 ~~degree, as provided in Section 30-9-12 NMSA 1978; or~~

18 ~~(6)]~~ (5) attempt to commit any of the sex
19 offenses set forth in Paragraphs (1) through ~~[(5)]~~ (4) of this
20 subsection, as provided in Section 30-28-1 NMSA 1978.

21 E. The department of public safety shall retain
22 registration information regarding a sex offender convicted for
23 the following offenses for a period of ten years following the
24 sex offender's conviction, release from prison or release from
25 probation or parole, whichever occurs later:

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1 (1) criminal sexual penetration in the fourth
2 degree, as provided in Section 30-9-11 NMSA 1978;

3 (2) sexual exploitation of children by
4 prostitution, as provided in Section 30-6A-4 NMSA 1978;

5 (3) false imprisonment, as provided in Section
6 30-4-3 NMSA 1978, [~~when the victim is less than eighteen years~~
7 ~~of age and the offender is not a parent of the victim~~] with
8 intent to inflict a sexual offense;

9 (4) criminal sexual contact in the fourth
10 degree, as provided in Section 30-9-12 NMSA 1978;

11 [~~(4)~~] (5) aggravated indecent exposure, as
12 provided in Section 30-9-14.3 NMSA 1978;

13 [~~(5)~~] (6) enticement of child, as provided in
14 Section 30-9-1 NMSA 1978;

15 [~~(6)~~] (7) incest, as provided in Section
16 30-10-3 NMSA 1978, when the victim is less than eighteen years
17 of age;

18 [~~(7)~~] (8) solicitation to commit criminal
19 sexual contact of a minor in the second, third or fourth
20 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;

21 [~~(8)~~] (9) child solicitation by electronic
22 communication device, as provided in Section 30-37-3.2 NMSA
23 1978, for convictions occurring on or after July 1, 2013; or

24 [~~(9)~~] (10) attempt to commit any of the sex
25 offenses set forth in Paragraphs (1) through [~~(6)~~] (7) of this

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1 subsection, as provided in Section 30-28-1 NMSA 1978.

2 F. Notwithstanding the provisions of Subsection E
3 of this section, if a sex offender is convicted a second or
4 subsequent time for a sex offense set forth in that subsection,
5 the department of public safety shall retain information
6 regarding the sex offender for the entirety of the sex
7 offender's natural life.

8 G. The department of public safety shall adopt
9 rules necessary to carry out the provisions of the Sex Offender
10 Registration and Notification Act. Rules necessary for the
11 collection of DNA samples and the administration and operation
12 of the sex offender DNA identification system shall be adopted
13 by the DNA identification system oversight committee pursuant
14 to the provisions of the DNA Identification Act."

15 SECTION 4. Section 29-11A-5.1 NMSA 1978 (being Laws 1999,
16 Chapter 19, Section 8, as amended) is amended to read:

17 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
18 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
19 NOTIFICATION--INTERNET WEB SITE.--

20 A. If a sex offender is convicted of one of the
21 following sex offenses, the county sheriff shall forward
22 registration information obtained from the sex offender to the
23 district attorney for the judicial district in which the sex
24 offender resides and, if the sex offender is a resident of a
25 municipality, the chief law enforcement officer for the

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1 municipality in which the sex offender resides:

2 (1) aggravated criminal sexual penetration or
3 criminal sexual penetration in the first, second or third
4 degree, as provided in Section 30-9-11 NMSA 1978;

5 (2) criminal sexual contact of a minor in the
6 second, third or fourth degree, as provided in Section
7 30-9-13 NMSA 1978;

8 (3) sexual exploitation of children, as
9 provided in Section 30-6A-3 NMSA 1978;

10 (4) sexual exploitation of children by
11 prostitution, as provided in Section 30-6A-4 NMSA 1978; or

12 (5) attempt to commit any of the sex offenses
13 set forth in Paragraphs (1) through (4) of this subsection, as
14 provided in Section 30-28-1 NMSA 1978.

15 B. A person who wants to obtain registration
16 information regarding sex offenders described in Subsection A
17 of this section may request that information from the:

18 (1) sheriff for the county in which the sex
19 offenders reside;

20 (2) chief law enforcement officer for the
21 municipality in which the sex offenders reside;

22 (3) district attorney for the judicial
23 district in which the sex offenders reside; or

24 (4) secretary of public safety.

25 C. Upon receiving a request for registration

1 information regarding sex offenders described in Subsection A
2 of this section, the county sheriff, chief municipal law
3 enforcement officer, district attorney or secretary of public
4 safety shall provide that registration information, with the
5 exception of a sex offender's social security number and DNA
6 information, within a reasonable period of time, and no later
7 than seven days after receiving the request.

8 D. Within seven days of receiving registration
9 information from a sex offender described in Subsection A of
10 this section, the county sheriff shall contact every licensed
11 daycare center, elementary school, middle school and high
12 school within a one-mile radius of the sex offender's residence
13 and provide them with the sex offender's registration
14 information, with the exception of the sex offender's social
15 security number and DNA information.

16 E. The department of public safety shall establish
17 and manage an internet web site that provides the public with
18 registration information regarding sex offenders described in
19 Subsection A of this section, except that the department of
20 public safety shall not provide registration information on the
21 internet web site regarding a sex offender who was less than
22 eighteen years of age when the sex offender committed the sex
23 offense for which the sex offender was convicted as a youthful
24 offender, as provided in Section 32A-2-3 NMSA 1978, unless at
25 the time of sentencing, the court made a finding that the sex

1 offender is not amenable to treatment and is a danger to the
2 community. The registration information provided to the public
3 pursuant to this subsection shall not include a sex offender's
4 social security number or DNA information or a sex offender's
5 place of employment, unless the sex offender's employment
6 requires the sex offender to have ~~[direct]~~ unsupervised contact
7 with children under sixteen years of age. The internet web
8 site shall provide only the following registration information:

9 (1) the sex offender's legal name and any
10 other names or aliases that the sex offender is using or has
11 used;

12 (2) the sex offender's current address and the
13 address of every place where the sex offender habitually lives;

14 (3) if the sex offender's employment involves
15 unsupervised contact with children under sixteen years of age,
16 the sex offender's place of employment;

17 (4) the sex offenses for which the sex
18 offender has been convicted;

19 (5) a photograph of the sex offender;

20 (6) the sex offender's date of birth; and

21 (7) a physical description, including a
22 description of any tattoos, scars or other distinguishing
23 features on the sex offender's body that would assist in
24 identifying the sex offender."

25 SECTION 5. Section 29-11A-9 NMSA 1978 (being Laws 2005,

Chapter 279, Section 7) is amended to read:

"29-11A-9. STATE PREEMPTION--SAVING CLAUSE.--

A. The state preempts the field of sex offender registration and notification. Cities, counties, home rule municipalities and other political subdivisions of the state are prohibited from adopting or continuing in effect any ordinance, rule, regulation, resolution or statute on sex offender registration and notification and from imposing any other restrictions on sex offenders that are not included in the Sex Offender Registration and Notification Act. Local law enforcement agencies shall not require a sex offender to report or to register more frequently or to provide information not required by the Sex Offender Registration and Notification Act.

B. After January 18, 2005, cities, counties, home rule municipalities and other political subdivisions of the state are prohibited from adopting or amending an ordinance, rule, regulation or resolution on sex offender registration and notification. An ordinance in effect on January 18, 2005 shall continue in force and effect until repealed; provided that the ordinance shall only continue in force and effect with regard to sex offenders who are required to register pursuant to the provisions of the ordinance but who are not required to register pursuant to the provisions of the Sex Offender Registration and Notification Act. All other sex offenders shall register pursuant to the provisions of the Sex Offender

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1 Registration and Notification Act."

2 SECTION 6. Section 30-37-3.2 NMSA 1978 (being Laws 1998,
3 Chapter 64, Section 1, as amended) is amended to read:

4 "30-37-3.2. CHILD SOLICITATION BY ELECTRONIC
5 COMMUNICATION DEVICE.--

6 A. Child solicitation by electronic communication
7 device consists of a person knowingly [~~and intentionally~~]
8 soliciting a child under sixteen years of age, by means of an
9 electronic communication device, with the intent to engage the
10 child in sexual intercourse, sexual contact, [~~or in a~~] sexual
11 or obscene performance or [~~to engage in~~] any other sexual
12 conduct when the perpetrator is at least four years older than
13 the child.

14 B. Whoever commits child solicitation by electronic
15 communication device is guilty of a:

16 (1) fourth degree felony if the child is at
17 least thirteen but under sixteen years of age; or

18 (2) third degree felony if the child is under
19 thirteen years of age.

20 C. Whoever commits child solicitation by electronic
21 communication device and also appears for, attends or is
22 present at a meeting that the person arranged pursuant to the
23 solicitation is guilty of a:

24 (1) third degree felony if the child is at
25 least thirteen but under sixteen years of age; or

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1 (2) second degree felony if the child is under
2 thirteen years of age.

3 D. In a prosecution for child solicitation by
4 electronic communication device, it is not a defense that the
5 intended victim of the defendant was a peace officer posing as
6 a child under sixteen years of age.

7 E. For purposes of determining jurisdiction, child
8 solicitation by electronic communication device is committed in
9 this state if an electronic communication device transmission
10 either originates or is received in this state.

11 F. The notice provisions of Section 30-37-4 NMSA
12 1978 shall not apply to this section.

13 [~~F.~~] G. As used in this section:

14 (1) "electronic communication device" means a
15 computer, video recorder, digital camera, fax machine,
16 telephone, cellular telephone, pager, audio equipment or any
17 other device that can produce an electronically generated
18 image, message or signal; and

19 (2) "soliciting" means requesting, inducing,
20 urging, advising, commanding or otherwise attempting to promote
21 or facilitate another to engage in certain conduct."

22 SECTION 7. Section 30-37-3.3 NMSA 1978 (being Laws 2007,
23 Chapter 67, Section 1) is amended to read:

24 "30-37-3.3. CRIMINAL SEXUAL COMMUNICATION WITH A CHILD--
25 PENALTY.--

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1 A. Criminal sexual communication with a child
2 consists of a person knowingly and intentionally communicating
3 directly with a specific child under sixteen years of age by
4 sending the child obscene images of the person's intimate parts
5 by means of an electronic communication device when the
6 perpetrator is at least four years older than the child.

7 B. Whoever commits sexual communication with a
8 child is guilty of a fourth degree felony.

9 C. The notice provisions of Section 30-37-4 NMSA
10 1978 shall not apply to this section.

11 ~~[G-]~~ D. As used in this section:

12 (1) "electronic communication device" means a
13 computer, video recorder, digital camera, fax machine,
14 telephone, pager or any other device that can produce an
15 electronically generated image; and

16 (2) "intimate parts" means the primary genital
17 area, groin, buttocks, anus or breast."

18 SECTION 8. APPLICABILITY.--The provisions of Sections 1
19 through 5 of this act apply to:

20 A. a person convicted of a sex offense on or after
21 July 1, 2005; and

22 B. a person convicted of a sex offense prior to
23 July 1, 2005 and who, on July 1, 2005, was still incarcerated,
24 on probation or on parole for commission of that sex offense.

25 SECTION 9. EFFECTIVE DATE.--The effective date of the

underscored material = new
[bracketed material] = delete

provisions of this act is July 1, 2013.

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